

**COMMISSIONER'S DIRECTIVE #4**  
**Revised November, 2000**  
**(replaces Directive #4 dated August 16, 1983)**

<p><b>Disclaimer:</b> Commissioner's directives are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent is not binding on either the Department or the taxpayer. Therefore, the information provided in this directive should serve only as a foundation for further investigation and study of the current law and procedures covered here.</p>
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**Subject:** Collection of Tax From Transient Merchants

**References:** IC 6-2.1-2; IC 6-2.1-5; IC 6-2.5-2; IC 6-2.8-8; IC 6-3-4; IC 6-3-5; IC 6-8-1; IC 6-8.1-5; IC 25-37-1

**Introduction:** The purpose of this directive is to outline the Department's position on the collection of sales tax, gross income tax, and adjusted gross income tax, from transient merchants.

**Sales Tax:** Under IC 6-2.5-2-2, a 5% sales tax is imposed on retail merchants' transactions which constitute selling at retail. Generally, before selling at retail in Indiana, a merchant is required to obtain a Registered Retail Merchant Certificate under IC 6-2.5-8. Retail merchants which have no certificate (or an invalid one) are subject to imprisonment and a fine (Class B misdemeanor). Finally, failure to remit any taxes collected by any retail merchant may also subject the merchant to a longer prison term and a higher fine (Class D felony). These criminal penalties are in addition to the civil sanctions and procedures described below.

However, in lieu of a Registered Retail Merchant Certificate, a “transient merchant” (defined in IC 25-37-1 as someone who engages in temporary business in Indiana) must obtain a transient merchant license from the county auditor of the county in which the merchant intends to do business. Ten days before applying to the auditor for a license, the merchant must send a written notice to the Department. The notice in general must contain the following:

- (1) The period of time and the location from which the merchant intends to transact business;
- (2) The approximate value of the items to be offered for sale;
- (3) Any other information requested by the Department or required by Departmental rule.

If the transient merchant does not hold a valid certificate or license, any tax collected by the merchant is to be paid to a Department representative on request. If the merchant fails to remit the tax collected based on his sales, a notice of tax due will be issued, based on the best information available. Failure to pay the tax due will result in the issuance of a warrant, to be served on the transient merchant the next time the merchant is in the state. Refusal to pay the warrant can result in levy and execution on the merchant’s property. These civil sanctions and procedures are in addition to the criminal penalties described above.

**Gross Income Tax:** Under IC 6-2.1-2-2, a tax is imposed on the taxable gross income of nonresident corporations derived from activities within Indiana. The rate of the gross income tax is three-tenths of one percent (.003%).

Under IC 6-2.1-5-1.1, a taxpayer is required to file a quarterly gross income tax return if his estimated liability exceeds \$1,000 in any year. However, IC 6-8.12-5-3 allows the Department to make an immediate assessment of tax, interest, and penalties if it is determined that a taxpayer intends to: depart the state, remove his property, conceal his person or property, or to do any thing to jeopardize, prejudice, or render ineffective, proceedings to collect the tax. If the tax is not paid upon demand, a warrant will be issued. This warrant will be served on the taxpayer the next time the taxpayer is in the state. Refusal to pay the warrant can result in levy and execution on the taxpayer’s property.

Any tax paid under the above-cited law which is found to be in excess of the amount due may be claimed as a refund under IC 6-8-1-9.1

**Individual Income Tax:** Under IC 6-3-2-1, a tax is imposed on nonresidents' adjusted gross income derived from sources within Indiana. While IC 6-3-5-1 provides that nonresidents from states having reciprocal agreements with Indiana are not subject to Indiana adjusted gross income tax, such reciprocal agreements only apply to salaries, wages, tips and commissions. Therefore, this Indiana Code section is not applicable to proceeds from transient merchant sales.

Under IC 6-3-4-4.1, a taxpayer is required to make a declaration of estimated tax if the taxpayer expects to owe \$400 or more income tax on the income from which tax is not withheld under IC 6-3-4-8. IC 6-8.1-5-3, however, allows the Department to make an immediate assessment of tax, interest and penalties for the same reasons outlined under "Gross Income Tax", above. The warrant procedure will be used if the tax is not paid on demand.

Any taxes paid under preceding statutory provisions which are found to be in excess of the amount due may be claimed as refunds under IC 6-8.1-9-1.

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Kenneth L. Miller, Commissioner  
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